

JUN 12 2006

Atty. Docket No. LMND.P044DC~~PATENT~~

IN THE UNITED STATES PATENT OFFICE

In Re Patent Application of:

Matthew R. Selmon, et al.

Application No. 10/647,904

Filed: August 25, 2003

For: BLUNT MICRO-DISSECTION CATHETERExaminer: Kevin T. Truong
Art Unit: 3731Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION IN VIEW OF
PRIOR-ISSUED PATENT

Sir:

Lumend, Inc., the owner of the entire right, title and interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior-issued United States Patent No. 6,638,247.

The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior-issued patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory terms as defined in 35 U.S.C. 154 to 156 and 173 of the prior-issued patent, as presently shortened by any terminal disclaimer, in the event that the prior-issued patent later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

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The above disclaimer is being made in view of section 804.02, subpart II of the Manual of Patent Examining Procedure, Eighth Edition, August 2001 (revised October 2005), which provides in part:

The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

An authorization to charge our credit card for the Terminal Disclaimer fee under 37 C.F.R. § 1.20(d) is submitted herewith.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Authorization is hereby given to charge any additional fees which may be required in connection with this submission to Deposit Account No. 503616.

Respectfully submitted,

Courtney Staniford & Gregory LLP

Date: June 12, 2006


Barbara B. Courtney, Reg. No. 42,442

Correspondence address:

Courtney Staniford & Gregory LLP
P.O. Box 9686
San Jose, CA 95157

Tel.: 408-342-1902
Fax: 408-342-1909